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In The

Supreme Court of the United States

October Term, 1997

JERRY D. COUCH,

Petitioner,

v.

SPRINT CORPORATION,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

This is an unexceptional case which presents no important question of federal law and no circuit conflict. Petitioner Jerry Couch, a white male, brought a lawsuit under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* ("Title VII"), and the Missouri Human Rights Act, Mo. Rev. Stat. § 213.055. He alleged that Sprint Corporation ("Sprint") passed him over for promotion because of his race and sex, and later demoted him in retaliation for complaining about Sprint's alleged discrimination.

A jury returned a verdict in Couch's favor on all of his claims. The District Court, which had reserved decision on Sprint's motion for judgment as a matter of law both at the close of Couch's case-in-chief and at the close of all evidence, granted Sprint's renewed motion following the jury verdict. The District Court concluded that Couch had failed to produce sufficient evidence that Sprint's stated reasons for its employment decisions were pretexts for intentional race and sex discrimination. The District Court further concluded that no reasonable jury could find that Couch's alleged complaint of discrimination played any role in his demotion because the chief decisionmaker had no knowledge of Couch's alleged complaint. The United States Court of Appeals for the Eighth Circuit adopted the District Court's analysis and affirmed.

No compelling reason exists to grant the petition for a writ of certiorari in this unremarkable employment discrimination case. The *only* issue in this case is whether

Couch produced sufficient evidence to support his three distinct claims of discrimination and retaliation, an issue particularly ill-suited for Supreme Court review. While Couch now seeks to recast his case as one implicating the issue of "diversity" in the workplace, Sprint's commitment to workplace diversity played no role in the specific employment decisions at issue. Moreover, far from disregarding or modifying the legal standard for granting judgment as a matter of law under Rule 50 of the Federal Rules of Civil Procedure, the District Court's and Eighth Circuit's conclusion that no jury could reasonably find that intentional discrimination or retaliation played any role in the employment decisions at issue in this case was in full accord with Rule 50's well-settled principles and this Court's pronouncements on the burden of proof in employment discrimination cases. In short, there is nothing about this case that warrants or justifies review by this Court.

COUNTER STATEMENT OF THE CASE

I. Relevant Facts Governing The Specific Employment Actions At Issue

Although it is not apparent from his petition, Couch challenges only three distinct employment decisions: (a) the promotion of Sara Shepard to the position of Manager, National Agreements; (b) the hiring of Isaiah Brown to the position of Manager, Corporate Agreements; and (c) the decision to demote Couch one grade without a loss of pay. The dispositive facts surrounding these decisions, although largely ignored by the petition, are undisputed.

In 1993, Couch worked as a Grade 75 National Agreements Negotiator in the Materials Management department. Sara Shepard, a white female, held the same title, but at a higher Grade 76 level. Mike McCormick, a white male who then supervised Shepard and Couch, had promoted Shepard to the Grade 76 level because she had shown outstanding leadership skills and consistently had outperformed and received higher evaluations than Couch.

In late 1993 and early 1994, Sprint combined the Materials Management and Business Services departments to form the Materials & Services Management department ("M&SM"). Lauren Wright, a white female, was selected to head the new department. Shortly thereafter, Sprint hired Benn Sledge, a black male, to serve as Director of Contracts and National Agreements in the M&SM department.

In October 1994, the position of Manager, National Agreements in the M&SM department became vacant. Four individuals applied for the position, and two – Shepard and Couch – were interviewed. Sledge, in consultation with McCormick, chose Shepard to fill the vacancy. Sledge and McCormick concluded that Shepard had consistently outperformed and received higher evaluations than Couch, and that her strong leadership skills were particularly well-suited for this managerial position. Additionally, in May 1994, Couch had received a verbal warning for deficiencies in his ability to work with others, communication skills and customer service.

After Sprint announced Shepard's promotion to Manager, National Agreements, Couch complained to Sledge

that he was more qualified than Shepard and should have been promoted in her stead. Couch did not, however, state that he believed that Shepard had received the position because of her gender or that he had been denied the promotion because he was a man. Additionally, Sledge did not tell anyone of Couch's complaint.

In November 1994, the position of Manager, Corporate Agreements became available. As Couch admitted at trial, Sprint's written job application procedure required internal candidates to submit a Job Interest Request ("JIR") form to be considered for posted positions. Indeed, Couch testified he knew of no internal candidate who received a posted position without first submitting a JIR. Nevertheless, Couch did not submit a JIR for the Manager, Corporate Agreements position. Thus, he was not even considered for the position.

In January 1995, Sprint hired Isaiah Brown, a black male, for the Manager, Corporate Agreements position. Brown had managerial experience at Hallmark Cards and procurement experience from his service in the military. Wright, Sledge, McCormick and David Fogelman, another white male, all participated in the hiring decision. They jointly concluded that Brown's proven leadership ability and qualifications would be a good fit for the position.

Shortly before Sprint hired Brown, Couch had been placed on final written warning for improperly renegotiating a national pager agreement (the Air Signal agreement) to Sprint's detriment. Although Couch admits he had promised one of the M&SM department's internal

customers, Lee Jobe, that he would not amend the agreement until Jobe and he discussed it further, Couch renegotiated the contract without affording Jobe the opportunity to comment on the change. When Jobe learned of the change, and the amount of money his group would lose as a result, he complained to both Wright and Sledge.

After investigating Jobe's complaint, Sprint concluded that Couch had exercised poor business judgment. Consequently, on December 15, 1994, Couch received a final written warning for his conduct. Moreover, Wright, in consultation with Sledge, Shepard, Sara Miller and Angela Webster, decided to take further disciplinary action against Couch. Although Wright wanted to terminate Couch because of his conduct, Sledge successfully argued that Couch only should be demoted. Accordingly, Couch ultimately was demoted from a Grade 75 to a Grade 74 position, *but without any decrease in pay*. There is no record evidence that Wright, Shepard, Miller or Webster knew of Couch's complaint to Sledge concerning Shepard's promotion at the time of Wright's demotion decision.

II. The District Court's Decision

In granting Sprint's motion for judgment as a matter of law, the District Court applied the following legal standard of review:

> Judgment as a matter of law is appropriate when the evidence points one way and is susceptible of no reasonable inference sustaining the position of the nonmoving party. *White v.*

> *Pence*, 961 F.2d 776, 779 (8th Cir. 1992). Although every reasonable inference is to be drawn in the plaintiff's favor, an inference is reasonable only if it can be drawn from the evidence without resorting to speculation. *Frieze v. Boatmen's Bank of Belton*, 950 F.2d 538, 541 (8th Cir. 1991); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 . . . (1986) (stating that, upon motion for summary judgment or motion for directed verdict, a judge must ask "whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented" and that "a mere existence of a scintilla of evidence" in support of the plaintiff's position will be insufficient).

(App. 13).

The District Court then carefully applied this standard to each of Couch's claims. With respect to Couch's race discrimination claim, the District Court concluded that the record evidence established that Sprint had hired Brown because he was a qualified candidate, and that Couch had not been considered for the position because he had not filled out the required JIR (App. 19). The District Court further noted that Couch knew of no other employee who had received a posted position at Sprint without first completing a JIR (App. 19).

The District Court then concluded that Couch had failed to present any record evidence that would allow a jury to reasonably find that Sprint's reasons were pretextual "and that the real reason for [Sprint's] action was intentional discrimination" (App. 20) (citing to *St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993)). The District Court noted that the "bulk of Plaintiff's evidence sought

to suggest that, because Sledge was black, his participation in the hiring of another black male was evidence of discrimination against Couch" (App. 20). The District Court found such evidence to be insufficient as a matter of law for two reasons. First, a black supervisor's decision to hire a black employee was not probative evidence of intent to discriminate against Couch (App. 20).[1] Second, the uncontroverted evidence demonstrated that Sledge was not the sole decisionmaker in hiring Brown; rather, Wright, McCormick, Miller and Shepard, all of whom are white, also participated and concurred in the decision to hire Brown (App. 20). Based on this overwhelming evidence, the District Court concluded:

> [T]he evidence merely demonstrated that a black man was hired into a position that Plaintiff desired but for which he did not formally apply. *Plaintiff has failed to set forth sufficient affirmative evidence demonstrating that a factual issue of pretext and the ultimate issue of discrimination exists.*

(App. 20) (emphasis added).

The District Court likewise carefully considered the evidence relating to Couch's sex discrimination claim. It noted the following facts were undisputed:

- Each of Sprint's witnesses testified that Shepard's promotion was based on her superior communication and leadership skills and

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[1] Contrary to Couch's implied suggestion, "networking" is not evidence of illegal discrimination. While hiring a friend may be "unfair," it is "not a violation of state and federal laws prohibiting" "discrimination in employment." *Brandt v. Shop 'N Save Warehouse Foods, Inc.*, 108 F.3d 935, 938-39 (8th Cir. 1997).

qualifications, and had nothing to do with her gender (App. 22-23)

- Shepard consistently earned job performance evaluations that were superior to those of Couch (App. 22-23)
- All of Couch's supervisors testified that he lacked the leadership and communication skills necessary for a management position (App. 23)
- Couch admitted that Shepard was qualified for the position (App. 22-23)
- McCormick, a white male, had promoted Shepard to Grade 76, a position more senior than that of Couch, prior to the promotion decision at issue (App. 23)

Based on these undisputed facts, the District Court concluded:

> The evidence at trial *was susceptible to only one interpretation* – Sprint's management personnel exercised business judgment and promoted Sara Shepard to Manager, National Agreements because of her superior qualifications and not because of her gender. *No reasonable jury could find otherwise.*

(App. 23-24) (emphasis added).

Finally, the District Court carefully reviewed the evidence relating to Couch's claim that Sprint demoted him (but with no salary loss) in retaliation for complaining to Sledge about Shepard's promotion to the position of Manager, National Agreements. The District Court observed that the following facts were undisputed: Couch never told any Sprint manager or employee that he believed he

had been denied a promotion for *discriminatory* reasons; Wright, Jobe and Sledge testified that Sprint demoted Couch because of their belief that he had exercised poor judgment in renegotiating the Air Signal contract without affording Jobe the opportunity to comment on the change; and Couch had produced no evidence that Wright, the decisionmaker, knew that Couch had complained to Sledge about Shepard's promotion (App. 25-27). Based on these undisputed facts, the District Court concluded that "a *reasonable jury* could not find that Plaintiff's complaint played any role in Plaintiff's demotion without resorting to speculation. Consequently, judgment as a matter of law is appropriate" (App. 27) (emphasis added).

REASONS WHY THE WRIT SHOULD BE DENIED

I. This Case Is Inappropriate For Supreme Court Review Because It Simply Involves An Examination Of The Sufficiency Of Evidence Presented At Trial

"A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." S. Ct. R. 10. Yet, erroneous factual findings are exactly what Couch asks this Court to review:

> The district court and the Eighth Circuit's decisions to *ignore* completely the probative *evidence* of race and sex based employment decisions based on Sprint's commitment to diversity cannot be tolerated by this Court. The Court should grant the writ to find that *evidence* of an

> employer's commitment to diversity which created race and gender based employment decisions is *probative* of discrimination and would support the jury's verdicts in this case.

(Pet. at 20) (emphasis added). Furthermore, Couch concedes that he seeks relief from the lower courts' "obvious" failure to apply a rule of law – namely, the "well settled" standard for granting judgment as a matter of law (Pet. at 20, 23). In essence, Couch's petition boils down to a request that this Court reevaluate the evidence and find that the District Court and Eighth Circuit reached the wrong factual conclusions. Supreme Court Rule 10 explicitly declares such a case to be inappropriate for review by this Court.

II. Contrary To Couch's Characterization, This Is Not A "Workplace Diversity" Case

Recognizing that his fact-based case is particularly unsuited for Supreme Court review, Couch seeks to recast his case as one implicating the issue of diversity in the workplace. There is *no* evidence, however, that Sprint's commitment to diversity played any role in the *specific* decisions to promote Shepard, hire Brown or demote Couch. Indeed, Sprint never even suggested that any of the employment decisions at issue in this case were motivated in whole or in part by improving diversity in the workplace. Not surprisingly, therefore, Couch did *not* present the issue of workplace diversity to the Eighth Circuit. His Statement of Issues to the Court of Appeals made no reference to "diversity," but instead contended only that the evidence and reasonable inferences from the evidence supported the jury's verdict. Indeed, both to the

Eighth Circuit and this Court (Pet. at 19), Couch characterized Sprint's commitment to diversity merely as "background evidence" that the District Court improperly disregarded in granting Sprint's motion for judgment as a matter of law.[2]

Because this case has nothing to do with diversity, *Taxman v. Bd. of Educ. of the Township of Piscataway*, 91 F.3d 1547 (3d Cir. 1996), *cert. granted*, 117 S. Ct. 2506, *cert. dismissed*, 118 S. Ct. 595 (1997), is inapposite. In *Taxman*, the United States brought a Title VII action challenging the Piscataway school board's affirmative action plan of preferring minority teachers over nonminority teachers in layoff decisions where teachers were equally qualified. The school board's affirmative action policy specifically

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[2] In his effort to make this case a workplace diversity case, Couch distorts the record. He asserts that Sprint's commitment to diversity applied to hiring and promotion decisions. (App. 6). That is not correct. As all of the decisionmakers in the M&SM department testified, the diversity commitment merely broadened the pool of applicants; Sprint still hired or promoted the most qualified candidate from that pool. In the absence of any evidence that the diversity commitment motivated a specific employment decision, "[a]n employer's affirmative efforts to recruit minority and female applicants does not constitute discrimination." *Duffy v. Wolle*, 123 F.3d 1026, 1038-39 (8th Cir. 1997), *cert. denied*, No. 97-1371 (May 26, 1998) (explaining why an effort to broaden the applicant pool is not discriminatory and why such a policy does not harm white males in any way other than forcing them to compete against a larger pool of qualified applicants). *Accord Silver v. City University of New York*, 947 F.2d 1021, 1022 (2d Cir. 1991); *Ditzel v. University of Medicine and Dentistry of New Jersey*, 962 F. Supp. 595, 605 (D.N.J. 1997); *Messer v. Meno*, 936 F. Supp. 1280, 1293 (W.D. Tex. 1996).

stated that, "when candidates appear to be of equal qualification, candidates meeting the criteria of the affirmative action program will be recommended." *Id.* at 1550. In accordance with that policy, the school board specifically relied on race as the determining factor in selecting which of two equally qualified employees to lay off. *Id.* at 1551-52.

By contrast, in this case, Couch was not as equally qualified as Brown or Shepard. In fact, both were far more qualified than Couch. More importantly, there is no evidence that Sprint's commitment to diversity, Brown's race or Shepard's sex played any role in the promotion or hire decisions at issue. Rather, the uncontroverted facts establish that those decisions were based on legitimate, nondiscriminatory reasons, and that race, sex or diversity played no role.[3] Thus,

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[3] Couch's contention that 16 of the 19 advances in Sledge's group went to females or minorities is beside the point. He presented no evidence regarding the qualifications required for those jobs, the relative qualifications of the candidates or the reasons for selection in those cases. The bare statistic has no probative value, especially with respect to the employment actions relating to Couch. *See Schultz v. McDonnell Douglas Corp.*, 105 F.3d 1258, 1259 (8th Cir.), *cert. denied*, 118 S. Ct. 56 (1997) ("statistics must evaluate comparable employees to be meaningful indicators of pretext"); *Sheehan v. Daily Racing Form, Inc.*, 104 F.3d 940, 942 (7th Cir.), *cert. denied*, 117 S. Ct. 2480 (1997) (statistical analysis of list of 17 employees held inadmissible where expert failed to correct for any potentially explanatory variables other than age and ignored the fact that the 17 employees held a variety of jobs). Indeed, on March 25, 1997, the district court granted Sprint's alternative motion for a new trial because it concluded that Couch's emphasis on this irrelevant statistical evidence resulted in an unreliable jury verdict.

the legality of considering workplace diversity as a motivating factor in an employment decision is not presented by this case.

III. Neither The District Court Nor The Eighth Circuit Created Or Applied The Wrong Standard For Granting Judgment As A Matter of Law

Couch argues that this Court should grant the petition because the District Court and the Eighth Circuit disregarded the clear standard for granting judgment as a matter of law, thereby depriving him of his right to trial by jury.[4] Alternatively, he claims that the Eighth Circuit has created inconsistent standards in ruling on judgment as a matter of law pursuant to Rule 50 by applying one standard before submitting the case to a jury and a different standard when reviewing the motion after a jury verdict. Neither contention has merit.

A. The Lower Courts Properly Applied The Correct Standard Under Fed. R. Civ. P. 50

As the Eighth Circuit stated (App. 1), and as Couch concedes, the standard for granting Rule 50 motions is "well settled" (Pet. at 23). Thus, this case is about application of a legal standard – not the propriety of the standard. The lower courts' alleged failure to apply this "well

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[4] Of course, "it is settled that Rule 50(b) does not violate the Seventh Amendment's guarantee of a jury trial." *Neely v. Martin K. Eby Construction Co.*, 386 U.S. 317, 321 (1967).

settled" standard is particularly ill-suited for review by this Court. *See* Part I *supra*.[5]

Notwithstanding Couch's assertions to the contrary, the District Court unquestionably applied the proper standard. As Couch correctly notes, Rule 50 requires a court to consider the evidence in the "light most favorable to the plaintiff," to give the plaintiff "the benefit of all favorable inferences that may reasonably be drawn," and to grant judgment as a matter of law "only when all the evidence points one way and is susceptible of no reasonable inferences sustaining the position of the nonmoving party" (Pet. at 21-22). This is the *exact* standard that the District Court followed. Specifically, the District Court stated that "[j]udgment as a matter of law is appropriate when the evidence points one way and is susceptible of no reasonable inference sustaining the position of the nonmoving party," and that "every reasonable inference is to be drawn in the plaintiff's favor" (App. 13). Significantly, although Couch now claims that the District Court applied an incorrect standard, he did not make that argument to the Eighth Circuit. His only argument to the Eighth Circuit was that the District Court misapplied the standard.

Thus, Couch's contention that the Eighth Circuit "agreed with the district court that there is no 'substantial

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[5] As this Court has recognized, "[d]etermination of whether a new trial should be granted or a judgment entered under Rule 50(b) calls for the judgment in the first instance of the judge who saw and heard the witnesses and has the feel of the case which no appellate printed transcript can impart." *Cone v. West Virginia Pulp & Paper Co.*, 330 U.S. 212, 216 (1947).

evidence' that Sprint's given reasons were a pretext for discrimination" (Pet. at 23) is disingenuous. In fact, the words "substantial evidence" do not even appear in the District Court's decision.[6] Rather, the District Court concluded that the evidence was *"susceptible to only one interpretation"* and that Couch failed to set forth *"sufficient affirmative evidence"* to demonstrate that discrimination existed – the very standard that Couch recognizes is "clear and well stated in the Eighth Circuit" (*see* Pet. at 21, noting that a motion for judgment as a matter of law presents a legal question: "whether there is sufficient evidence to support a jury verdict"). *See also* Fed. R. Civ. P. 50(a) (judgment as a matter of law is appropriate if "there is no legally sufficient basis for a reasonable jury to find for the party on that issue").[7]

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[6] This misstatement of the record, considered alone, requires that the petition be denied. Supreme Court Rule 14.4 provides that "[t]he failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition."

[7] Contrary to Couch's contention, neither the District Court nor the Eighth Circuit "weighed" the evidence or made credibility determinations in deciding Sprint's motion. Rather, the District Court concluded that the uncontested evidence was susceptible to only one reasonable interpretation: Couch's sex, race or alleged complaint played no role in the employment decisions at issue (App. 20, 24, 27). As this Court has stated, "directed verdict is mandated where the facts and the law will reasonably support only one conclusion." *McDermott International, Inc. v. Wilander*, 498 U.S. 337, 356 (1991). *See also Anderson*, 477 U.S. at 251 (directed verdict proper where the evidence "is so one-sided that one party must prevail as a matter of law").

Because the District Court applied the correct legal standard in deciding Sprint's Rule 50 motion, it necessarily follows that the Eighth Circuit likewise reviewed the case under the proper standard by its agreement with the District Court. While the Eighth Circuit may have made an isolated reference to the lack of "substantial evidence" in the record, a careful review of the Court of Appeals' decision establishes that it merely adopted the District Court's analysis and conclusions:

> Because the controlling law is clear, our review satisfies us that an opinion would have no precedential value in this fact-intensive case. We agree with the district court's analysis and conclude the district court correctly granted the motion for judgment as a matter of law. We thus affirm the judgment without further discussion.

(App. 2).[8]

Moreover, a recent decision by the Eighth Circuit forecloses any contention that its decision in this case constitutes a departure from the well-settled standards of Rule 50. In *Cross v. Cleaver II*, ___ F.3d ___, 1998 WL 164414 at *5 (8th Cir. April 10, 1998), the Court of Appeals articulated and applied the precise standard on which

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[8] Indeed, in its opinion, the Eighth Circuit expressly refers to the well-established Rule 50 standards (App. 1) (noting that "there is no evidence tending to show that the head of his department . . . knew about Couch's complaint until after the demotion decision was made" and concluding that "Couch's meager evidence would not permit a jury reasonably to find there was any connection between Couch's promotion-related complaint and his demotion for poor business judgment").

Couch relies in his petition. Thus, no compelling reason requires review by this Court.

B. Neither The District Court Nor The Eighth Circuit Adopted A Different Standard Of Review For Considering A Motion For Judgment As A Matter Of Law After The Return Of A Jury Verdict

In a final futile attempt to gain review by this Court, Couch maintains that the District Court's reference to the burden-shifting analysis set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), somehow created a different standard of review for considering a post-verdict Rule 50 motion and improperly placed on Couch "the burden of proving pretext and looked for 'substantial evidence' of that proof" (Pet. at 27). Again, Couch's argument misstates what took place in the lower courts.

Foremost, as discussed above, the District Court never even mentioned "substantial evidence" in its opinion. Rather, the District Court properly analyzed the evidence in this case under the well-established Rule 50 standards. *See* Part III.A *supra*.

Moreover, the District Court's decision is in full accord with this Court's decisions in *Hicks, Postal Service Bd. of Governors v. Aikens*, 460 U.S. 711 (1983); *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248 (1981), and *McDonnell Douglas*. As this Court noted in *Hicks*, the *McDonnell Douglas* burden-shifting scheme exists to force the defendant "to come forward with some response"; once the defendant's production has been made, "the trier of fact proceeds to decide the ultimate question:

whether plaintiff has proven 'that the defendant intentionally discriminated against him' because of his race [or sex]." *Hicks*, 509 U.S. at 510-11.[9] There is no question that the District Court faithfully adhered to *Hicks*'s holding by analyzing the sufficiency of the evidence for a finding of intentional race or sex discrimination. *See* App. 20 (Couch was required to show the "existence of evidence of some additional facts that would allow a jury to find that Sprint's proffered reason was a pretext and that the real reason for its action was intentional discrimination," citing to *Hicks*); App. 23 (to succeed on his sex discrimination claim, "Plaintiff needed to prove that Sprint's stated reasons for promoting Sara Shepard were not true but merely pretextual and that the [sic] Sprint's actual motive for the decision was intentional discrimination based on gender").

Therefore, far from deciding Sprint's Rule 50 motion based on the *McDonnell Douglas* burden-shifting analysis, the District Court properly reached the "ultimate question": whether Couch had presented sufficient evidence that the real reason for Sprint's actions was intentional discrimination. And, as Couch recognizes (Pet. at 29), the Eighth Circuit essentially adopted the District Court's analysis and opinion. Thus, no incorrect or conflicting standard exists in the Eighth Circuit that requires review by this Court.

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[9] Given that the *McDonnell Douglas* burden-shifting scheme exists to force the defendant to come forward with legitimate, non-discriminatory reasons for its actions, *Hicks*, 509 U.S. at 510-511, Couch can hardly argue that he was prejudiced by the District Court's use of that analytical framework.

IV. The District Court's Grant Of A New Trial Further Militates Against Supreme Court Review

Finally, Couch's petition ignores the procedural posture of this case. Couch fails to address the fact that the District Court granted Sprint's alternative motion for a new trial pursuant to Federal Rules of Civil Procedure 59(e) and 60(b) because Couch's undue emphasis on flawed statistical evidence that the District Court should have excluded resulted in an unreliable jury verdict. Thus, even if this Court were to overturn the decision to grant Sprint's motion for judgment as a matter of law, the jury verdict still will not stand. Coupled with the absence of any compelling reason supporting Couch's petition, the procedural posture of this case further makes this case inappropriate for review by this Court.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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